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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/503,429	02/14/2000	Thomas Blaszczykiewicz	202.000080	6587

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EXAMINER	
WACHTEL, ALEXIS A	
ART UNIT	**PAPER NUMBER**
1771	8

DATE MAILED: 11/05/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/503,429	BLASZCZYKIEWICZ, THOMAS	
	Examiner	Art Unit	
	Alexis Wachtel	1771	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *30 July 2002* .

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-12* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-12* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11)☐ The proposed drawing correction filed on _____ is: a)☐ approved b)☐ disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12)☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____ .

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) ☐ The translation of the foreign language provisional application has been received.

15)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ .
4) ☐ Interview Summary (PTO-413) Paper No(s). _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: .

Detailed Action

1. Claims 13 and 14 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected method, there being no allowable generic or linking claim. Election was made **without** traverse in Paper No. 7.

Response to Amendment

2. Applicant's amendment and accompanying Remarks filed 7-30-2002 have been entered and carefully considered.

The amendment is insufficient to overcome the anticipation and obviousness rejections of claims 1-6 and 8-12. The amendment is sufficient to overcome 112 2nd paragraph rejections of claims 2-5. Claim 7 is cancelled without prejudice.

Specification

3. The use of the trademark Lycra has been noted in this application. It should be capitalized wherever it appears and be accompanied by the generic terminology. Although the use of trademarks is permissible in patent applications, the proprietary nature of the marks should be respected and every effort made to prevent their use in any manner which might adversely affect their validity as trademarks.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1,4,6,8 and 9 are rejected under 35 U.S.C. 102(b) as being anticipated by US 5,139,476 to Peters as set forth in sections 7 and 8 of the last office action.

Examiner acknowledges Applicant's replacement of "lycra" with spandex.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

7. Claims 2 and 3 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 5,139,476 to Peters as set forth in section 10 of the last office action.

Examiner acknowledges Applicant's replacement of "lycra" with spandex.

8. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over US 5,139,476 to Peters in view of US 5,399,306 to Follows et al.

With regards to claim 5, Peters as set forth above fails to teach using bright nylon, semi dull nylon and bright spandex in the outer layer. Examiner assumes equivalence between language of "brightness", "bright" and "dull" and degrees of luster. Follows et al describes luster as an important aspect of the visual aesthetics of a yarn and is a measure of the degree to which a yarn reflects and scatters light which may vary from the smooth mirror-like to the rough or chalk-like (Col 1, lines 64-68). In view of this teaching, Thus it would have been obvious for one of ordinary skill to have used dull

and bright nylon and bright lycra as the fibers in the outer layer motivated by the desire to improve the attractiveness of Peters's laminate.

With regards to claim 5, Peters as set forth above fails to teach the claimed proportions of bright spandex to bright and dull nylon. However, it would have been obvious for one of ordinary skill in the art at the time the invention was made to have optimized the sheen and reflectiveness of the outer layer of Peter's laminate by selecting the relative proportions of the components through the process of routine experimentation.

9. Claims 10-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 5,139,476 to Peters in view of US 5,900,087 to Chakrabarti et al as set forth in section 11 of the last office action

Response to Arguments

10. Applicant argues that the limitation "compressed foam" must be given weight since the structure of Applicant's claimed invention is necessarily different than the structure of Peters's composite. Examiner disagrees. Applicant claims an article structure, whose claim limitations are clearly met by the cited prior art. Compression is taken by Examiner to be a means by which to attenuate the foam's density. Compression is but one possible way by which to attenuate the foam's density. Another means would involve optimizing the amount of blowing agent used in the foam production process for the purpose of obtaining the desired foam density. Examiner wishes to point out that compression of an exisitng foam will alter the density of said foam from "density A" to "density B". (If foam compressed then foam "density B"

achieved). Alternatively, controlling the amount of blowing agent used to make the foam will also result with a foam of "density B". (If foam blowing agent amount optimized then foam "density B" achieved). Therefore, achieving foam of "density B" does NOT necessarily require the use of a compression step as supported by fundamental axiomatic logic. Further, given the indentical chemistry, porosity and density of the foam materials, it is not seen what physical effect the compression step would have on the foam to distinguish it from the prior art.

Conclusion

11. The prior art of record and not relied upon is considered pertinent to Applicant's disclosure. In addition, the following references are cited for disclosing various aspects of Applicant's invention:

US 5738937
US 5689828
US 4782605
US 5160314

12. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office Action. Accordingly, THIS ACTION IS MADE FINAL. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any

extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Alex Wachtel, whose number is (703)-306-0320. The Examiner can normally be reached Mondays-Fridays from 10:30am to 6:30pm.

If attempts to reach the Examiner by telephone are unsuccessful and the matter is urgent, the Examiner's supervisor, Mr. Terrel Morris, can be reached at (703) 308-2414. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9310 for regular communications and (703) 872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.

TERREL MORRIS
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 1700